REMARKS

Claims 1-38 are pending. Claims 1-38 stand rejected relying on newly cited prior art. Applicant is amending claims 27, 34, and 36-38.

Applicant acknowledges the withdrawal of the 101 rejections of claims 22-26.

Substance of Interview on May 1, 2007

Applicant and Supervisory Patent Examiner Tuan Dam discussed the rejections of claims 34-37 under 35 U.S.C. §101. No agreement was reached during the telephonic interview.

Information Disclosure Statement

The Office Action acknowledges receipt of the Information Disclosure Statement filed on July 14, 2003 and the information referred to therein being considered by the Examiner. However, Applicant notes that the Examiner has <u>not</u> initialed the fifth non-patent literature document identified as: Hofmann, A., "Knowledge-Based Approach to Optimizing and Maintaining Cogeneration Facilities." Thus, Applicant requests that the Examiner initial this reference.

Newly Cited Prior Art

Claims 1-38 are rejected under 35 U.S.C. 102(a) as allegedly being unpatentable over US Patent No. 6,678,889 B1 (Burkett), which is newly cited prior art. Burkett discloses systems, methods, and computer programs for defining a console for managing a plurality of applications. (Abstract.) For example, Burkett discloses (Column 5, lines 43-67. Emphasis added.):

> **Referring now to FIG. 2, an administrative console 10 for managing multiple heterogeneous application programs or products[1] according to an embodiment of the present invention is illustrated.** The illustrated console 10 is defined by an Extensible Markup Language (XML) document, written in the Console Markup Language (CML). Products and their associated tasks are

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[1] The disclosure in Burkett refers to an *application* as being a *product*. For example, Burkett discloses "Applications and other resources managed via administrative consoles are typically referred to collectively as "products." (Column 1, lines 20-22.)

managed via the console 10. The illustrated console 10 includes six parts: the Navigator area 12, the Title area 14, the Content area 16, the Action area 18, the Task Switcher area 20, and the Message area 22. The Navigator area 12 contains all of the categories (i.e., products), tasks, and resources.

The products 30 within the illustrated console 10 include: General Administration 30a; MAUI 1.1 Test Cases 30b; Misc. Examples 30c; Navigator Test Suite 30d; TML Interpreter Test Suite 30e; Wizard Test Suite 30f; Workspace On Demand 30g; IBM Host Publisher 30h; and C3 Programmer's FAQ 30i. Each of the products 30 in the illustrated console 10 is presented as a respective drawer (32a-32i) in the Navigator area 12 of the console 10. Each of the products 30 has a hierarchical list of administrative tasks and a hierarchical list of resources associated therewith. In the illustrated console 10, the drawer 32h for the product IBM Host Publisher 30h is open and the hierarchical lists of administrative tasks 34a, and resources 34b are displayed.

Referring to fig. 2, Burkett merely discloses console 10 that is used for managing various products (e.g., application IBM Host Publisher 30h). As illustrated in fig. 2, drawer 32h is associated with a hierarchal list or administrative tasks and resources that may be associated with application 30h. Burkett further discloses a document defined by Console Markup Language (CML) that specifies console 10.

Other Amendments

Applicant is amending claim 37 to replace "radium" with "medium" to correct a typographical error.

Claim Rejections – 35 U.S.C. §101

Claims 34-37 are rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter.

Regarding independent claim 34, Applicant is amending the claim to be directed to "A physical computer-readable medium having stored thereon a data structure, the data structure specifying an application." (Emphasis added.) The amendment is supported by the specification as originally filed, e.g., Paragraph 33.

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The Office Action alleges that (Page 2.):

Claims 34-37 are non-statutory because the claimed invention is subject to 35
U.S.C. 101 as being a data structure, non-functional descriptive material. Data
structures claimed as computer listings per se, i.e., the descriptions or expressions
of the programs, are not physical "things." They are neither computer
components nor statutory processes, as they are not "acts" being performed. Such
claimed computer programs do not define structural and functional
interrelationships between the computer program and other claimed elements of a
computer which permit the computer program's functionality to be realized. See
MPEP 2106.01 (II).

However, claim 34 includes functional interrelationships among the first, second, and third data

fields for specifying an application that is being created. For example, the first field identifies a

component of the application, the second data field identifies the stage of the component, and the

third data filed field represents a property of the component. Moreover, claim 34 is directed to

statutory material because the claim is directed to a data structure encoded on a claimed

computer-readable medium in concert with the guidance provided by MPEP 2106.01 (I)[2].

Applicant is amending independent claim 36 to be similarly directed to "A physical

computer-readable medium having stored thereon a data structure, the data structure specifying

an application." Claims 35 and 37 depend from claims 34 and 36, respectively. Thus, claims 35-

37 are directed to statutory subject matter for at least the above reasons. Applicant requests

reconsideration of claims 34-37.

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[2] MPEP 2106.01 (I) asserts "Data structures not claimed as embodied in computer-readable
media are descriptive material *per se* and are not statutory because they are not capable of
causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d
at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not
define any structural and functional interrelationships between the data structure and other
claimed aspects of the invention which permit the data structure's functionality to be realized. **In
contrast, a claimed computer-readable medium encoded with a data structure defines
structural and functional interrelationships between the data structure and the computer
software and hardware components which permit the data structure's functionality to be
realized, and is thus statutory.**" (Emphasis added.)

Claim Rejections – 35 U.S.C. §102

Claims 1-38 are rejected under 35 U.S.C. §102(a) as allegedly being anticipated by US Patent No. 6,678,889 B1 (Burkett).

Burkett fails to teach or even suggest the feature of "creating the application through the user-interface" as included in independent claim 1. The Office Action alleges that Burkett discloses a method for designing an application that includes (Page 4, section 8.):

> ... (c) creating the application through the user-interface (see for example column 5, lines 43-54.

As discussed above, Burkett merely discloses console 10 that is used for managing various products (e.g., application IBM Host Publisher 30h). As illustrated in fig. 2, drawer 32h is associated with a hierarchal list or administrative tasks and resources that may be associated with application 30h. Burkett further discloses a document defined by Console Markup Language (CML) that specifies console 10. (Column 5, lines 43-67.) Burkett's teachings presuppose (require) a previously created application and merely suggest the management of the application, e.g., IBM Host Publisher 30h. For example, Burkett fails to even suggest combining components (e.g., a decoding algorithm component and a decryption component) to create an application. Moreover, claims 2-26 ultimately depends from claim 1 and are not anticipated by Burkett for at least the above reasons. Applicant requests reconsideration of claims 1-26.

Regarding independent claim 27, Applicant is amending the claim to include the feature of "a user-interface module that generates a design surface, the design surface specifying the application **to create the application**." (Emphasis added.) The amendment is supported by the specification as originally filed, e.g., Paragraphs 29-31 and Figures 2 -3. However, Burkett fails to teach this feature. The Office Action alleges that Burkett discloses a system for designing an application that includes (Page 9.):

> ... a use-interface module that generates a design surface the design surface specifying the application (see for example FIG. 2, item, "console", and related text) ...

As previously discussed, Burkett's teachings presuppose a previously created application and merely suggest the management of the application. Claims 28-33 ultimately depend from claim 27 and are <u>not</u> anticipated for at least the above reasons. Applicant requests reconsideration of claims 27-33.

Regarding independent claim 34, Applicant is amending the claim to include the feature of "a first data field that contains a first identifier for a first component, **the first component being used to create the application**." (Emphasis added.) The amendment is supported by the specification as originally filed, e.g., Paragraphs 29-31 and Figures 2 -3. However, Burkett fails to teach this feature. The Office Action alleges that Burkett discloses a physical computer-readable medium having a stored thereon a data structure including (Page 11.):

> ... a first data field that contains a first identifier for a first component, the first component being applicable for an application (see for example column 6, lines 25-39, "...four-level CML listing ...")...

However, the CML listing merely specifies console 10 as discussed above. As discussed above, console 10 merely manages previously created applications (products). Claim 35 depends from claim 34. Applicant requests reconsideration of claims 34-35.

Regarding independent claim 36, Applicant is amending the claim to include the feature of "a second data field that contains a first indicator that indicates a first position of the first stage within a design surface, the design surface specifying a creation of the application." The amendment is supported by the specification as originally filed, e.g., Paragraphs 29-31 and Figures 2 -3. However, Burkett fails to teach this feature. The Office Action alleges that Burkett discloses a computer-readable medium having stored thereon a data structure that includes (Page 11.):

> ... (b) a second data field that contains a first indicator that indicates a first position of the first stage within a design surface (see for example FIG. 7, and related text); ...

Burkett merely discloses a configuration that used in conjunction with a previously created application to perform a task. (Column 7, lines 38-47.) Moreover, claim 37 depends from claim 36 and is not anticipated for at least the above reasons. Applicant requests reconsideration of claims 36-37.
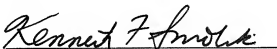
Regarding independent claim 38, Applicant is amending the claim to include the feature of "dynamically constructing a user-interface in accordance with the policy, the user-interface supporting a design surface for a creation of the application and a toolbox with a plurality of available components." The amendment is supported by the specification as originally filed, e.g., Paragraphs 29-31 and Figures 2 -3. However, Burkett fails to teach this feature. The Office Action alleges that Burkett discloses a method for an application that includes (Page 13.):

> ... (c) creating a representation of the application, the representation, the representation having at least one stage, each stage having at least one component selected from the plurality of available components by a user (see for example column, lines 43-54);...

As previously discussed, Burkett's teachings presuppose a previously created application and merely disclose the management of the application. Applicant requests reconsideration of claim 38.

All objections and rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

Respectfully submitted,

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